

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA for the
use of WALTHAM LIME & CEMENT
COMPANY,

Plaintiff,

v.

PEABODY CONSTRUCTION, INC.,
ODF CONTRACTING CO., INC.,
HOON COMPANIES, INC., and
TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA,

Defendants.

CIVIL ACTION NO. 05-10138 NG

**MOTION TO DISMISS OF DEFENDANT TRAVELERS CASUALTY
AND SURETY COMPANY OF AMERICA**

COMES NOW, Defendant Travelers Casualty and Surety Company of America ("Travelers") and, pursuant to Fed R. Civ.P.12 (b) (1), hereby moves for the dismissal of Count I of Plaintiff's Complaint on the grounds that Plaintiff's Miller Act Claim is barred by the applicable statute of limitations as provided by 40 U.S.C. §3131-3134 and, therefore, this Court lacks subject matter jurisdiction.

In support of this Motion, Travelers relies upon and incorporates herein by reference the Memorandum of Law submitted herewith.

WHEREFORE, Travelers respectfully requests that this Honorable Court allow this Motion to Dismiss Count I of Plaintiff's Complaint, award Travelers its costs and attorneys' fees, and for such other and further relief as this Court deems just and proper.

Respectfully Submitted,
**TRAVELERS CASUALTY & SURETY
COMPANY OF AMERICA**

By its attorneys,

/s/ Jonathan C. Burwood

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Date: July 13, 2005

Local Rule 7.1 Certificate:

I, Jonathan C. Burwood, hereby certify that I have consulted with counsel for Plaintiff Waltham Lime & Cement Company with respect to this Motion to Dismiss in a good faith effort to resolve or narrow the issues.

/s/ Jonathan C. Burwood

Jonathan C. Burwood